2

THE DEBATE IN THE HOUSE OF COMMONS,

ON

WEDNESDAY, FEBRUARY 27, 1771,

ON

The BILL to repeal a Clauſe in the Act for quieting the Poſſeſſion of the Subject,

COMMONLY CALLED

The NULLUM TEMPUS ACT.

LONDON:

Printed for J. ALMON, oppoſite Burlington-Houſe, in Piccadilly.

MDCCLXXI.

[Price One Shilling and Six-pence.]

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ADVERTISEMENT.

ON Monday the 11th of February, 1771, Sir William Meredith made a motion, which was ſeconded by Lord Charles Spencer, for leave to bring in a bill to repeal a clauſe in the *Nullum Tempus* act, which allowed a year to the grantees or leſſees of the Crown to proſecute their claims to effect. This motion was carried by 152 againſt 123.

On the 20th of the ſame month, the bill having been twice read, the Houſe divided again, Whether the bill ſhould be committed? which was carried in the affirmative by 155 againſt 140.

On the 27th of the ſame month the further conſideration of the bill came on. The debate of this day, which determined the fate of the bill, is the debate here printed. For ſome days before this debate came on, the public papers were filled with ſcurrilous articles againſt the advocates of the bill, and the moſt groſs miſrepreſentations of the ſtate of the caſe between the Duke of Portland and Sir James Lowther. With what view all this was done, is not difficult to gueſs; and to ſhew that it was done, we ſhall give, as a ſpecimen of the whole, the abuſe of only one day, from only one paper, viz. The Public Advertiſer of Tueſday February 26, 1771.

A Word

A Word to the OPPOSITION in the Lower Room.

Diſcite JUSTITIAM *moniti!*

My Lords and Gentlemen,

I OBSERVED on Wedneſday night laſt how extremely *cock-a-hoop* you all were on occaſion of ſo numerous a diviſion in ſupport of a motion to deprive a Northern *Baronet* (by an *ex poſt facto* law) of a great part of his landed property; and that too at a time when the matter is *ſub judice.*

How you can reconcile this conduct with the principles of juſtice, I cannot conceive.—Allow me only to aſk you a plain queſtion: ſuppoſe that a meaſure of this ſort had been attempted by a MINISTER, what would have been the conſequence?—It would have blown him up; it is ſuch a flagrant act of injuſtice as would have overturned *any* adminiſtration.—And does *a flagrant act of injuſtice* change its NATURE, becauſe it is adopted by OPPOSITION?—This would indeed be verifying the old proverb, that "it is ſafer for one man to "ſteal a horſe, than for another to look over a "hedge."

For ſhame, Gentlemen! pauſe but for a moment, and reflect on your preſent conduct.—Let not private pique and animoſity to an individual ſo far hurry you out of your ſenſes, as to make you overleap the bounds of juſtice, and give a mortal ſtab to the conſtitution.

MENTOR.

To

To the PRINTER.

SIR,

I so much hate what Shakeſpeare calls the *law's delay*, that I am glad to ſee a proſpect of all laws being at an end. Theſe tedious Courts in Weſtminſter are beyond bearing; they examine witneſſes, they pay a regard to evidence, they reſpect the authority of old muſty deeds. Commend me to that great and upright judge Sir William Meredith and his aſſeſſors, who will, without proof, or even examination, diſpatch you a cauſe in a few minutes. It is ſkip Jack and begone with them when a friend is concerned. Who the devil cares a farthing for old rolls of parchment? Uſurpation is the beſt foundation of right; and the world, as well as the foreſt of Inglewood, was made for the longeſt ſword.

SCÆVA.

To Sir JAMES LOWTHER.

I WOULD have you to know, Sir, that the juſtice of your cauſe ſhall avail you nothing. What right has a proud, reſerved, though, perhaps, honourable man to juſtice? Have you not preſumed to marry the daughter of that unpopular Lord whom we all hate? Have you not been uniform in your ſupport of government againſt anarchy and confuſion? Have you not had the imprudence to detect one *of us* in a *robbery?* Yet you expect to meet with juſtice! —Know, Sir, that you expect to *receive* what we have not to *give*. We live by injuſtice; we

ſojourn with partiality. All our *motions* are retrograde; th y are directed to our own intereſt; and were *every man to have his own*, poor patriotic knaves might ſtarve.

JOSEPH SNIP, *Taylor and Patriot.*

To Sir WILLIAM MEREDITH.

DEAR KNIGHT,

HAVING a damned bad cauſe depending in Weſtminſter-hall, I am under terrible apprehenſions that *juſtice will be done*; and that I ſhall be diſappointed in my views upon the pelf of a proud deſpot, whom I have ſingled out, as a proper perſon to ſupply my preſent wants. I, therefore, requeſt of you, my dear Baronet, to remove the cauſe into the *proper place*; and that *you and our friends* RESOLVE the ſuit in my favour. Though I act not ſuch a conſpicuous part in patriotiſm, as his Grace of Portland, I have done ſome *little* ſervice in the London Tavern; and, with all due ſubmiſſion, claim my ſmall *modicum* of the ſpoils of our enemies.—Pray, good Sir William, would it not be highly proper to ſhut up, at once, all the Courts of Law? I am ſure they do us no good: our buſineſs is with *injuſtice*, for what the devil have poor rogues to do with juſtice?

I am Sir William's

Moſt obedient,

A POOR PATRIOT.

MONDAY,

MONDAY, FEBRUARY 27, 1771.

" The order of the day was read, for the Houſe to reſolve itſelf into a Committee of the whole Houſe, upon the bill to repeal a clauſe in an act made in the ninth year of his preſent Majeſty's reign, intituled, *An act to amend, and render more effectual, an act made in the twenty-firſt year of the reign of King* James *the Firſt, intituled, An act for the general quiet of the ſubjects againſt all pretences of concealment whatſoever*, which protects ſuch rights, titles, or claims, under any grants or letters patent from the Crown, as are proſecuted with effect within a certain time therein limited.

" And a motion being made, and the queſtion being put, that Mr. Speaker do now leave the chair;

" The following debate enſued:

JEREMIAH DYSON, Eſq.

MR. SPEAKER,

WE are now entering into a debate of the moſt ſolemn and ſerious queſtion, that I ever remember to have been agitated in this Houſe. For the extent of the propoſition goes to this: Whether we ſhall ſuffer the law of the land to proceed in its uſual and antient courſe, according to the known, certain, and eſtabliſhed rules of judicature; or whether we ſhall interpoſe the authority and controul of Parliament, in order to ſubſtitute a new, unprecedented, unconſtitutional mode of trial, in the room and in ſubverſion of that, which has been founded in the policy, and confirmed by

the wiſdom of paſt ages, and which our anceſtors hoped to have delivered down ſafe and inviolable to all future times: for, however gentlemen may attempt by their powers of eloquence to diſguiſe this propoſition, it is clearly this; That, in the inſtance of a ſuit now depending in the Courts below, this Houſe ſhall ſend forth a new rule of deciſion, in order to oblige the Courts of Weſtminſter-hall to decide in a different manner from what they muſt decide, provided no ſuch rule was ſent down to them. I affirm this to be the caſe, Sir, becauſe the gentlemen who bring in this bill aſſume the propoſition, that the Courts of Weſtminſter-hall muſt of themſelves decide in favour of Sir James Lowther, againſt the Duke of Portland; for, if they could at all rely on the juſtneſs of their cauſe, this bill would, in their own opinions, be unneceſſary. The deſign then is to compel the Courts of Law to decide in favour of the Duke of Portland, which Courts, if not put under ſuch controul, muſt decide in favour of Sir James Lowther. I have the ſtrongeſt reaſon for ſtating the ſuit againſt the Duke of Portland, as the only foundation for the bill, becauſe there is no other ſtated. On what principle of equity, juſtice, law, or the conſtitution, we can proceed on ſuch a baſis, I own, I cannot diſcover. I aver, that the proceeding, as far as my knowledge goes, is totally unprecedented: for although gentlemen have named one precedent, as they

they are pleaſed to call it, which is that of the legiſlature not only indemnifying perſons who have neglected to qualify, but ſtopping ſuch ſuits as are commenced on ſuch occaſions; yet I am ſure no gentleman can be ſerious in comparing a forfeiture under a penal ſtatute, to a civil ſuit commenced for a landed eſtate, under a right founded in common law, and proſecuted under the immediate ſanction and direction of Parliament. Indeed, Sir, I wiſh gentlemen would conſider the extenſive conſequences of this proceeding. For my own part, I feel myſelf bound in conſcience, as a candid, honeſt, and impartial Member of Parliament, to give my vote againſt any further proceeding in this buſineſs, and therefore I ſhall diſſent from the motion, that you do now leave the chair.

Honourable CONSTANTINE PHIPPS.

I SHALL, I hope, to the ſatisfaction of this Houſe, prove how groundleſs all the objections are, that have been made to this bill: it has been treated as a breach of the faith of Parliament, a violation of juſtice, and an invaſion of private property. Nothing more, however, is neceſſary to refute theſe groundleſs charges, than to examine them. I had indeed hoped, that this day's debate would have produced ſome freſh arguments, more worthy the attention of this Houſe, and that theſe would have been

confined to their proper place, I mean the news-papers, where they have, for theſe three days, been induſtriouſly propagated under fictitious names, and mixed with many groſs falſehoods, to prejudice the minds of the people: they have alſo appeared in the ſame company in an anonymous Caſe, induſtriouſly, partially, and ſecretly conveyed into the hands of ſome Members of this Houſe, by whom, and for what purpoſes, I do not pretend to ſay. [Here he made many obſervations on the falſehoods and miſrepreſentations in the Caſe.] I cannot however omit this opportunity of mentioning the very different conduct of the friends of this bill. They have not filled the papers with miſrepreſentations of a matter depending in this Houſe. Conſcious of the merits of that cauſe, which they have eſpouſed for its juſtice only, they have been content fairly and openly to offer their arguments in the courſe of two debates to the Houſe; every man ſtaking his character upon the veracity of his aſſertions, and the propriety of thoſe motives upon which he grounds his vote. The honourable gentleman * who ſpoke laſt, having thought proper to adopt theſe opinions, and to enforce them with his uſual ingenuity, it becomes neceſſary to contradict and diſprove them. He tells us, Sir, it would be a breach of the faith of Parliament: becauſe two years ago, in taking away the *nullum*

* Jeremiah Dyſon, Eſq;

nullum tempus rights of the Crown, you gave, by this clauſe, a right to the grantee of the Crown to proſecute, and directed him how to proceed, that, by paſſing this bill, you would take away the power you then gave, and ſay to the grantee, "Tho' "you have done what we directed, you "ſhall not have what we promiſed."—To anſwer this, it will be neceſſary to ſtate the caſe in more accurate and preciſe terms, than would have been convenient for the honourable gentleman's purpoſe. Parliament, as any man may ſee who reads this clauſe, did not promiſe any thing, or give any right; it is only a ſaving clauſe, by which Parliament left the powers of grantees open to future conſideration; but it is a new idea of parliamentary faith, repugnant to every idea of legiſlation, to ſuppoſe that Parliament, when it does not paſs an act, pledges itſelf never to paſs it: the honourable gentleman might as well have ſaid, becauſe the *Nullum Tempus* Bill was thrown out the firſt year, it was a breach of parliamentary faith to paſs it the ſecond. My idea, Sir, of parliamentary faith is very different: it can never be engaged, but where ſomething is given up for it. The faith of Parliament is engaged to public creditors, becauſe they have lent their money, upon terms propoſed by the legiſlature, which the legiſlature is bound to keep; and in that caſe, a man, who, from thinking it exorbitant, had oppoſed the loan,

loan, is bound in honour to vote againſt a repeal of that law, by which it was authoriſed: but it is not contended, that Sir James Lowther's conſent as an individual was neceſſary, in this caſe, to have paſſed the act originally without this clauſe: Parliament had then an undoubted right to have taken away the right from the grantees as well as the Crown; but having reſerved it for future conſideration, they are now, it being brought before them, as much at liberty to take it away, if they ſhall think it expedient. The Houſe as a body is abſolutely unpledged; every individual has a right, and ought, to exerciſe his own judgment in the vote he ſhall give. There is indeed another kind of parliamentary faith, which ought to be kept very ſacred; I mean the fulfilling, by the proviſions in the bill, whatever is promiſed to the people by its title. This was intitled "An act for "rendering more effectual an act of James "the Firſt, for quieting the ſubjects againſt "all pretences of concealment whatſoever." A clauſe was inſerted in this bill, not in the original act of King James, which, from two years experience, we find, has, in a great meaſure, defeated the intention of the act. The faith of Parliament will indeed be broken, if we obſtinately adhere to what we inadvertently paſſed, by ſupporting a clauſe which gives the lye to the title of the act. The people, who ſee the quiet that was promiſed not obtained, will have

reaſon

reaſon to believe that it was never intended, ſhould the bill now offered for repealing the the clauſe be rejected. To prove that it is a violation of juſtice, we are told, " This " bill is to give a direction to a Court of " Law, in the caſe of a particular perſon, " which will oblige them to decide by a " different rule from what they muſt other- " wiſe do, and that it is an *ex poſt facto* " law." Now, Sir, let us ſee how this charge will ſtand: The clauſe propoſed to be repealed might have been neceſſary in ſome caſes: A perſon long poſſeſſed of a crown-leaſe might have omitted to proſe- cute ſome encroachers upon his property, from knowing that no preſcription could bar him: if from any conſiderations of convenience he had ſuffered his claims to ſleep, it would have been unjuſt to preclude him without any warning from aſſerting his right. No ſuch grantee has availed himſelf of this clauſe, but a grantee of a very different kind has; one who has ob- tained a grant of an eſtate in the poſſeſſion of another man, upon the ſuggeſtion of a ſuppoſed defect in that title. If therefore this bill will only decide one cauſe, it is becauſe only one ſuch cauſe exiſts; I mean the cauſe of *one grantee* againſt *many poſſeſ- ſors*. The proviſion is general; but if only one man has brought himſelf under this deſcription, is it a reaſon why that man ſhould be ſuffered to avail himſelf of this

inadvertency

inadvertency of Parliament to the injury of of the quiet ſubject? But, Sir, this is not, as it is repreſented, a bill to give a direction to a Court of Law to determine a particular cauſe; it is to prevent a title by ſixty years poſſeſſion being canvaſſed upon any other ground in a Court of Law. Thoſe, who think the Duke of Portland equally intitled, with every other ſubject, to the protection of Parliament, will conſent by this act to extend that protection to his property, which the oppoſers of this bill admit is already afforded to every other man's. Thoſe, on the other hand, who think the Duke of Portland alone ſhould be left to be oppreſſed, harraſſed, and plundered, under the colour of a law, now in every other caſe obſolete, and reprobated by Parliament, will vote againſt the bill. To deter gentlemen from agreeing to this bill, it has been called an *ex poſt facto* law: ſuch a law in criminal caſes (which is the general acceptation of the expreſſion) is indeed juſtly alarming and odious, becauſe it makes an action, innocent at the time it was done, criminal by a ſubſequent act, and makes the actor liable to a puniſhment he could not be aware of at the time he did the act, and conſequently could not be deterred by. But why is this ſo alarming? Becauſe it makes the unwary ſubject the object of proſecution and oppreſſion, for ſomething he could not know he had acted wrong in. But there

is another kind of *ex poſt facto* law, which has ever been deemed as advantageous, as the other is injurious to the ſubject: I mean laws for the redreſs of grievances, which muſt neceſſarily be *ex poſt facto*, ſince no grievance *can* be redreſſed before it has been felt. This bill is calculated to redreſs a grievance; in that light, and in that only, it is an *ex poſt facto* law. The honourable gentleman has called upon us to ſupport by precedents this invaſion of property (as he terms it): he tells us, none have occurred to him; but one has been brought in this caſe in a former debate; that of the indemnifying bill, which now lies upon the table to be paſſed, taking away the penalty from a common informer, *veſted in him by law*; which, he tells us, is no way applicable to the preſent caſe; he has not, however, ſhewn us wherein they differ. I will ſhew in what they are alike, and doubt not of proving to the Houſe, that the ſituations of the two kinds of informers are more ſimilar, than the two kinds of *ex poſt facto* laws, which he has endeavoured to confound. A penal ſtatute makes men liable to a certain penalty for omitting to do certain things by *law directed*; and veſts the property of that penalty in any informer, who ſhall inforce the law againſt the delinquent, by ſtrictly following the directions of that act, as a reward for his diligence in *diſcovering* the breach of that law. The indemnify-

ing act takes away from the informer *this* property *ſo veſted in him by law*, tho' he has complied with the directions of the act, and actually obtained a verdict, and reſtores to the delinquent *that* property, which, under the former act, he had forfeited by non-obſervance of the law. In this caſe, the legiſlature, determining that the omiſſion ſhall not be puniſhed, takes away the reward from the informer, which was only given for the diſcovery of thoſe omiſſions. What is the caſe of the informer of concealments? *No law, but the cuſtom of office*, has given a beneficial leaſe of any property, which ſhall be ſuggeſted to belong to the Crown, in conſequence of any deficiency of title in the actual poſſeſſor, though for upwards of ſixty years, as a bribe to informers to rake into the title of their neighbours, and diſcover informalities and defects by which the Crown may reap advantage. The legiſlature, juſtly abhorring this odious and oppreſſive principle, have (as they in the penal caſe remitted the puniſhment) enacted, that the Crown ſhall not avail itſelf, to the prejudice of the ſubject, of any ſuch defect; but that ſixty years poſſeſſion ſhall be as good a title againſt the Crown, as it was before againſt the ſubject: where then is the injuſtice of taking away from the informer that reward, which was only held out as an inducement to him to do that which you declare ſhall not be done?

done? Is that man more the innocent object of parliamentary protection, who has omitted, however inadvertently, to comply with the directions of a law, which he might know becauſe it is public, than he, who, reſting ſecure in long hereditary undiſturbed poſſeſſion upon the credit of his anceſtors, the tacit evidence of his neighbours, and the Crown, whoſe right alone can be invaded; when this poſſeſſor has not even a poſſibility of knowing the defects of his title, becauſe he has not acceſs to the papers that are to point out ſuch defects? or is that man leſs the object of parliamentary faith, who, from intereſted motives, becomes the ſervant of the legiſlature, and proves a breach of the law, than he, who, from motives as avaricious, becomes the *tool* of office, to queſtion the rights of an unſuſpecting owner? However this precedent, ſtrong as it is, is not the only one. The very ſtatute of King James, and every quieting bill that ever paſſed, have taken away the claims of grantees ſo circumſtanced; and Lord Coke, in his reading on that ſtatute, mentions it as one of its greateſt merits, that it protected the ſubject againſt that *turbidum genus hominum*.—My Lord Coke, in his fourth Inſtitute, mentions another caſe ſtrongly in point. Some of theſe informers had obtained a grant from the Crown of a poſſeſſion always reputed to belong to the Biſhop of Norwich. The

Biſhop had taken a leaſe of this from the grantee, by a friend of his, one Hammond: Lord Coke, then Attorney-General, much miſliking this, as he expreſſes it, prevailed on the Biſhop, that an act of parliament ſhould paſs to ſecure this poſſeſſion to the biſhoprick. The Houſe is, I hope, convinced, that the object of this bill is not to violate, but fulfill the faith of parliament; not to obſtruct, but ſupport juſtice; not to invade, but to ſecure the property of the ſubject. The only queſtion is, whether, by rejecting this bill, you will ſupport and countenance informers; a race of men hardly to be tolerated, certainly not encouraged or favoured, in a free ſtate;—or, by paſſing it, ſecure that right which is the moſt honourable, and the moſt juſtly and univerſally favoured by the common law; a right founded in long hereditary, undiſturbed, *bona fide* poſſeſſion."

Honourable Mr. VANE.

I RISE, Sir, to give my diſſent to the motion that has been made for you to leave the chair, becauſe I think it my duty, as an honeſt man, and true repreſentative of the people, to oppoſe every ſtep in every ſtage of proceeding, which, I am firmly of opinion, is a violation of the rights of the

the people, a breach of parliamentary faith, and an overturning of the juriſdiction of the law. This proceeding, Mr. Speaker, had its commencement in rage and in tyranny; it was founded in the hope of bearing down the right and title of an honourable perſon, who aſks no favour, but the equal and unbiaſſed judgment of the law; who does not reſort to the law, but under the faith and direction of an act of parliament recently given. With what juſtice, what decency, can we annihilate the claim, that we ourſelves have ratified? How can this parliament take away from Sir James Lowther that very right, which this very parliament has directed Sir James Lowther to maintain? For when parliament gave Sir James Lowther an authority to commence a ſuit, that authority can bear no conſtruction, but that of a command ſo to do. And he was bound to proſecute his right, not for his own ſake, but on account of the public, to which the eſtate in queſtion will devolve, as ſoon as Sir James Lowther's grant expires.—Surely, then, I may apply the expreſſion of our great poet on this occaſion: for, ſince it was by our own command that Sir James Lowther began his ſuit,

" 'Twould be our tyranny to ſtrike and gall him
" For what we bid him do."——

But I, Sir, take up this queſtion on higher ground than that of perſonal conſideration. I think it the cauſe of common juſtice,

juſtice, common ſecurity, and public liberty; for I know no protection by which any man can hold his property, or live in freedom, but under the line and barrier of the law: if that is taken away, or overpowered, every thing is left in common to the will of a tyrant, or the fury of the multitude. To undermine, or to ſubvert the law, is the language, the principle, the act of deſpotiſm. I am ſorry to ſee, that this principle of deſpotiſm has carried us ſo far already; I earneſtly hope it will carry us no farther; but that we ſhall leave this cauſe where it now is, to be determined in the courts of law, according to the rules and principles of law.

Mr. Seymour.

I AGREE with every one of thoſe gentlemen, who think, that the rule of law is that very rule, which ought to guide our conduct, and to ſway our conſciences, in the queſtion now before us. It is therefore neceſſary only to ſtate what the *law* is. For, thank God, it is not a point of law that lies buried in the confuſion of chicanery and myſteries; it is a law that every man is acquainted with, who knows he has any thing that he can call his own. For I know, and we all know, that every man who has held an eſtate for the ſpace of ſixty years,

years, without moleſtation, cannot, by the common law, be diſturbed in his poſſeſſion. The queſtion before us is merely this, Whether an individual (I may name him, the Duke of Portland) ſhall be ſingled out by the Miniſters of the Crown, to have an eſtate taken from him by the renewal of a dormant power of the Crown? which I cannot allow to have been *law*, becauſe it counteracts that rule and principle of law, by which we are all protected in thoſe inheritances which our anceſtors have bequeathed to us. I hardly know what gentlemen mean, when they deny the right of parliament to alter the common law; becauſe every ſtatute that lies upon your table is either an alteration, or amendment, or inforcement of the common law. We do our duty to the public, as often as we paſs ſuch acts as give redreſs, where the law has denied it; and as often as we put a ſtop to the abuſe of power, where the common law is not able to reſtrain it. Our judgments, when they contradict the law, I grant, are arbitrary; when they are conformable to law, they are juſt, equitable, and favourable to liberty. I therefore agree to the motion, that you, Sir, do now leave the chair.

Serjeant LEIGH.

I RISE to give my teſtimony to the fairneſs of the manner, in which an honour-

able gentleman *, who ſits below me, has ſtated this queſtion. He has put it, I think, on the faireſt iſſue imaginable: for he ſays, that whoever thinks this cauſe unfit to be tried by the courts below, will agree to the motion; whoever thinks it fit and proper for the courts of Weſtminſter to decide this cauſe, as it is referred to them, will diſſent from the motion, that you do now leave the chair.

I am free moſt cordially to declare, that had I been poſſeſſed of a ſeat in this Houſe when the bill paſſed, I ſhould have oppoſed the inſertion of this clauſe. No man ſhall hear me adopt ſuch a principle as that of excluding a man from the benefit of a general law; much leſs could I have made a nobleman of the Duke of Portland's character the object of ſuch an excluſion.

But I have the concern to ſee, that parliament *has* excluded the Duke of Portland from the benefit of that act. Was it from inadvertency, from miſapprehenſion, from ignorance in point of fact, or error in judgment? Certainly no. The Duke of Portland's caſe in general was ſo much in the contemplation of the Houſe, that it even gave riſe to the bill. Was it from want of being informed of the preciſe ſituation in which the clauſe placed the Duke of Portland? Nothing like it. The clauſe was ſhewn, approved of, and conſented to by the counſel who managed his cauſe, who knew

* Mr. Dyſon.

knew moſt intimately the conditions of his grant, and who acted on this occaſion not ſo much in the way of their profeſſion, as in friendſhip to his Grace. Was it unknown to the Duke, or could he be impoſed on in the nature and conduct of the tranſaction? The character of the gentlemen concerned forbid one ſuppoſition, and the good ſenſe and wiſdom of his Grace deſtroy the other. The clauſe was then more than conſented to; it was approved by his Grace and all his friends; and under this very clauſe did the ſuit commence.

Under what pretence then can I now vote for removing a cauſe from its proper judicature, in which the legiſlature itſelf has placed it? Are the courts incompetent to try the cauſe? It cannot be ſuggeſted. Is any violence, injuſtice, or partiality, to be apprehended? No, Sir, it would be unjuſt to form an apprehenſion of this nature. Indeed, Sir, if this clauſe was as extenſive in its conſequences, as when it firſt paſſed, perhaps I might now think myſelf at liberty to vote for the repeal, and conſent to an intruſion upon the juriſdiction of the common law, by taking this ſuit out of the courſe of trial, to obtain the benefit of future ſecurity to the ſubject, from the unhappy conſequences of this clauſe. But the time allowed by the clauſe under your conſideration, for bringing ſuch ſuits, having elapſed, renders a *future* oppreſſion under this act im-

poſſible; and the offer made by Sir James Lowther in his place, to withdraw all other ſuits, removes the objection ariſing from a fear of *preſent* oppreſſion. It is upon theſe grounds that I refuſe to the Duke of Portland alone that relief, which, I confeſs, I would gladly extend to him with others; and tho' this bill bears upon the face of it the appearance of a *general* remedy, I think it beſt, however reluctantly, to ſacrifice the intereſt of his Grace, leſt this bill going down to poſterity, joined to his amiable character, ſhould be miſtaken for an act of partiality rather than juſtice, and become a dangerous precedent for an interference with the courſe of juſtice, upon leſs honourable motives, and a leſs plauſible occaſion. 'Tis for theſe reaſons, Sir, that I ſhall give my vote againſt your leaving the chair.

Mr. Cornwall.

The learned Serjeant, who ſpoke laſt, has with great clearneſs expreſſed his reaſons for diſſenting from the repeal of the clauſe, that is now under the conſideration of this Houſe. But his objections go no further back than the commencement of the ſuit, in conſequence of a grant made to Sir James Lowther of an eſtate which the Duke of Portland's family have had poſſeſſion of near ſeventy years. But my principles carry me further back than the inſtitution of the ſuit

—my

—my objection is to the grant itſelf; and if I think that grant oppreſſive, injurious, or tyrannous, I cannot, as far as my voice goes, conſent to lengthen its exiſtence one moment: whatever is built on ſuch a ruinous and bad foundation, ought to be inſtantly pulled down.

The grant was made on a revival of an abominable principle, that *nullum tempus occurrit regi.* I don't mean to flatter either the gentleman who obtained the grant, or thoſe who made it—I don't think the motives for ſoliciting it can be juſtified by any man in a cool moment—I think the reaſons for granting it unpardonable at any time. It was ſolicited, during the heat of an election, for the purpoſe of carrying on that election; it was granted, upon a ſuppoſed neceſſity of ſupporting the claims of the Crown. I don't think it a credit to any ſervant of the Crown to be tenacious of ſuch a prerogative. Had I had the honour to have been at the Treaſury Board, ſo far from giving my countenance and aſſiſtance to any grant in ſupport of the principles of the *nullum tempus* claim of the Crown, I ſhould have thought I had diſcharged my duty more agreeably to my gracious Maſter, and more like a faithful ſteward for the Public, by diſcouraging ſuch claims, and diſcountenancing every informer that attempted to avail himſelf of them.—The property of the Crown is

the property of the Public—that property is only valuable, as it is a part of the intereſt of the Public—The intereſt of the Public is, that the ſubject ſhould be quiet, and look up to the Crown with confidence for protection, and not dread to feel from it the hand of oppreſſion. What can be more unnatural and repugnant to the principles of a free government, than the exerciſe of a power, which veſts in the Crown an excluſive right of diſturbing the ancient poſſeſſions of the ſubject, not only for its own emolument, but to gratify the rapacity or revenge (I mean not to point this to the preſent inſtance, I mean the reverſe) of an unworthy individual, at the expence of, perhaps, the moſt meritorious and virtuous member of the community. Yet ſuch is the power claimed by the *nullum tempus* right, in its utmoſt extent. I confeſs, had I been for a partial repeal, the part exempted by this clauſe is that I ſhould be moſt ſolicitous to deſtroy; as I think much more vexation is to be dreaded from the paſſions and intereſts of individuals, that the neceſſities of the ſtate. As to the Duke of Portland himſelf, he is not only entitled to the protection, he deſerves the thanks of the public, for generouſly conſenting to wave the immediate poſſeſſion of that ſecurity, which, in common with every other ſubject, he had his right to. He was contented that his rights ſhould ſleep, leſt they ſhould be

a motive

a motive in the mind of any one man to clog ſo ſalutary a bill, and univerſal a benefit. I think therefore, as his caſe is now before you, that Parliament is bound in honour to defend him from that perſecution, from which it was his firſt object to redeem others, before he would attempt to preſerve himſelf.

Lord North.

The honourable gentleman * has at laſt revived in my memory a grant, which paſſed ſince I had the honour of holding the ſeal of the Exchequer, and which ſeal I am proud to own was affixed by *me* to the grant in queſtion. This he calls an abominable act: but in the ſituation I then was, and ſtill am, I thought myſelf bound to paſs it by every principle of duty to the Crown, as the ſervant of the Crown, and bound ſtill more ſtrongly by that duty which I owe to the Public, as ſteward of the public eſtate, as far as it is intruſted to me.—It is my glory that I paſſed the grant; and as often as mention of it is made, ſo often ſhall I think that honour imputed to me. The honourable gentleman †, who introduced this bill, ſpoke in a very different language.—He opened his propoſition with great politeneſs, great candor, and in a manner

* Mr. Cornwall. † Sir William Meredith.

manner entirely worthy of himſelf; but he will forgive me if I own, after ſuch an introduction, it ſurpriſed me the more, to find his concluſion to point at what I hardly conceive he will perſiſt in, a violation of private right, an utter perverſion of law and juſtice, and a breach of parliamentary faith.—Sure I am, Sir, the honourable gentleman would have thought no terms too ſevere, had ſuch a bill been adviſed or moved by Adminiſtration; but gentlemen in oppoſition are ſometimes apt to run lengths, that men in office would ſhrink from. But, Sir, whatever might be the ground of an intention to bring in this bill, that ground now is entirely removed. —The honourable gentleman, to whom the grant was given, has behaved in the nobleſt manner, a manner that muſt do him honour, not only in the breaſt of every ingenuous man, but that muſt extort admiration and praiſe from the mouth of enmity itſelf.

There were, it ſeems, many perſons who had incloſed lands under the faith of of ſeveral acts of parliament obtained by the Portland family; who, as they thought their titles were good, might have been exceedingly diſtreſſed, had not the goodneſs of Sir James Lowther relieved them. But there is no perſon remaining now, againſt whom any ſuit is commenced, but the Duke of Portland; and ſurely, Sir, the

Duke

Duke of Portland is no object of pity.—Therefore, even in the feelings of men, there can be no objection, why juſtice ſhould not run her courſe in reſpect of the Duke of Portland only.—But ſuch is the the fate of condeſcenſion and acquieſcence, that no ſooner had the honourable gentleman made the conceſſion, than an advantage is immediately taken againſt him of his own bounty, and it is aſked, why is the Duke of Portland to be alone excepted? All I can anſwer is, that juſtice muſt have taken her courſe in reſpect to all, had not Sir James Lowther himſelf exempted ſuch as his humanity pointed out. But it is the ſtrangeſt argument I ever heard, that, becauſe a gentleman had the generoſity to give away a part, therefore the reſt ſhall be forced from him. It has been inſinuated, indeed, that the honourable gentleman did not offer to make theſe exemptions, till after notice was given of bringing in the bill.—Sir, it is no buſineſs of mine to inquire, *when* the offer was made.—All I deſire to know is, what I do know, that they owe their quiet to the liberality of Sir James Lowther; and the event of this day will prove, that, had it not been for his liberality, they had been the real objects of pity, which theſe gentlemen have laboured to convince the Houſe the affluent Duke of Portland is.—But, ſurely, Sir! ſuch an object of *pity* as the

Duke of Portland, with all his vaſt hereditary, undiſputed poſſeſſions, was never held up to influence the paſſions, againſt the juſtice of the Houſe. No, Sir! this Houſe never will, for the ſake of pity, in a real caſe, put itſelf in the ſcandalous ſituation of a parliament that can break its faith. No, Sir! the faith of parliament, which was kept inviolate to Sir Richard Brook laſt year, notwithſtanding the efforts of a powerful, beloved, and noble connexion, will this year be held ſacred with Sir James Lowther. There is no difference in the circumſtances of the two caſes, none in the characters of the two gentlemen, to induce us to make ſo injurious a diſtinction, and, let me add, ſo diſgraceful to this Houſe, was it to take place.

Lord JOHN CAVENDISH.

THE ſubject that is now before you is of a nature that makes me extremely unwilling to ſpeak a word upon it; but there can be no ſituation, which obliges a man to ſilence, when juſtice requires him to ſpeak.—That juſtice impels me now to inform the Houſe, that there is a young lady, near in blood, and dear in affection to me, to whom I am a guardian, who has this very eſtate in queſtion ſettled upon her

her in part of her jointure: if then it has been pleaded for thoſe, who, it ſeems, are already exempted, that their ignorance of any defect in their titles ſhould entitle them to protection; ſure I am, that the Duke of Portland, had he not been in ignorance that the eſtate, which his family has poſſeſſed for ſo many generations, was liable to be torn from him by a grant; and that the able and upright lawyers, who drew up the ſettlement, had not been in equal ignorance; the Duke would never have offered, nor they accepted the eſtate, as part of her jointure, or included it in the ſettlement made upon her ſon.

Governor JOHNSTON.

I HAVE heard with indignation, rather than ſurpriſe, the arguments that have been uſed, in ſupport of a meaſure, the moſt violent, arbitrary, and unjuſt, that ever was propoſed to parliament. I therefore ſaid, Sir, I was not ſurpriſed; even though I have heard the bill ſupported by allegations, as falſe in fact, as the end propoſed is unjuſt. It has been treated, as if the property in queſtion was the eſtate of the Duke of Portland; and Sir James Lowther the invader of his eſtate. Sir, I deny that the Duke of Portland ever was the legal owner: I have the beſt authority to affirm, his Grace never had a right by law, and

that Sir James Lowther's grant is ſtrictly according to law: I therefore ſubmit it to the underſtanding of every man preſent, whether he is the right owner who has a legal title, or he who has no title at all? If the Duke of Portland has ſo juſt a right as is pretended, why is he ſo afraid of trying of it? Why has he pleaded privilege? Why has he uſed every artifice to gain time, perplex, and alſo draw the pity of the public? I ſuppoſe the noble Lord, who ſpoke laſt *, mentioned the caſe of an innocent Lady, to draw the compaſſion of the Houſe; but I can aſſure the noble Lord (for I am authorized to ſay ſo) that Sir James Lowther is as ready and as willing to make a recompence to the Dutcheſs of Portland, as to the other perſons who may be ſuppoſed to have eſcaped the view of the legiſlature when the bill paſſed; and who are ſo nobly exempted from all further proſecution by Sir James Lowther; but whoſe bounty and magnificence on this occaſion have been moſt ungenerouſly turned againſt him in favour of the Duke of Portland.

It has been ſaid, among other falſehoods, that Sir James Lowther applied for this grant, in order to influence the Cumberland election. That falſehood has been refuted by the honourable gentleman in his place, who has ſolemnly declared, that no regard to the Cumberland election governed him

* Lord John Cavendiſh.

him in the leaſt. Hearing it from my honourable friend's own mouth, it is impoſſible to doubt the truth of what he has ſaid. All the world muſt now believe, that Sir James Lowther had no view to the election, when he ſolicited the grant. It was the defence of his own property that induced him to apply to the Crown. For the Duke of Portland, not content with uſurping the eſtate of the Crown, could not reſt without attempting to uſurp the property of others, by virtue of his pretended grant. For he filed bills in Chancery againſt Sir James Lowther and the Corporation of Carliſle, in order to take from them the fiſhery of the river Eden; though Sir James Lowther's family have enjoyed the ſaid fiſhery ever ſince the reign of Edward the Firſt, and the Corporation have had theirs for centuries back. With with what juſtice or truth, then, can Sir James Lowther be ſaid to invade the ancient property of the Duke of Portland? when all he does is in defence of a moſt ancient property of his own, againſt the attacks of a new man in that count: for I will venture to ſay, that the anceſtors of Sir James Lowther had noble poſſeſſions there, many hundred years before the name of the Duke of Portland was known or heard of in the kingdom of Great-Britain. But all that my honourable friend aſks, is a fair trial at law; and whether he

that wiſhes to avoid the law, or he that deſires to be tried by the law, has the better cauſe, I ſubmit to the judgment of the Houſe.

Counſellor WALLACE.

I HAVE heard the queſtion treated as an intruſion upon the judicature of common law, for which gentlemen have aſſigned this reaſon, that, as it is already referred to the deciſion of the Courts below, we ſhould uſurp their authority, and controul their juriſdiction, were we now to ſtop the ſuits that are commenced. But every gentleman of my profeſſion knows, that it is the frequent practice of the Court of Chancery to diſmiſs ſuits, when there appears juſt reaſon why they ſhould proceed no farther in them. In the preſent inſtance, the Courts below are bound to proceed in the ſuit now under our conſideration; the legiſlature only can ſtop its progreſs; the legiſlature is therefore applied to in this caſe, as almoſt in every other, to do what the common law, without the aid of parliament, cannot do. The point, therefore, for *us* to conſider is, whether the common law, on thoſe general principles on which it acts, would entertain this ſuit? Certainly not, Sir! it is treſpaſſing upon the patience of the Houſe to repeat it, that *no Court can entertain a ſuit againſt an uninterrupted poſſeſſion of ſixty years.*

years. But it is ſaid, that this clauſe does not give Sir James Lowther any power, except againſt the Duke of Portland: but Sir James Lowther has inſtituted ſuits againſt two hundred perſons at leaſt, who are no way concerned with the Duke of Portland; and, as I am informed, ſome of thoſe perſons have given up their eſtates, rather than conteſt them.

It is ſaid, Sir, that the Duke of Portland has pleaded his privilege againſt Sir James Lowther; that I deny. It is alſo ſaid the Duke of Portland has attempted to take away from Sir James Lowther, and the Corporation of Carliſle, their fiſhery of the river Eden. Sir, the Duke of Portland has attempted no ſuch thing; he has never queſtioned the right, either of Sir James Lowther, or the Corporation of Carliſle.

The caſe is this: The Duke of Portland had a valuable fiſhery on the river Eden; betwixt this fiſhery and the ſea, Sir James Lowther and the Corporation of Carliſle have alſo fiſheries. But by a new mode of fiſhing, which is to lay fiſhing-nets quite acroſs the river, they have intercepted all the fiſh from running into the Duke of Portland's part of the river; ſo that it is uſeleſs, and of no value. But all that the Duke of Portland has done, is, to file a bill in Chancery for permiſſion to record the teſtimony of antient perſons, who remember what

what the methods of fiſhing were before theſe nets were invented, and this new mode practiſed: this is all the Duke of Portland has done. It has been often ſaid in this debate, that we have no precedent for ſtopping a law-ſuit in the midſt of its courſe. Sir, the annual bill that we paſs, both for preventing and ſtopping ſuits, and neglecting to qualify, is a precedent in point; I am perſuaded there are an hundred more in your ſtatute-book. But, Sir, if a man takes an office, civil or military or eccleſiaſtical, and neglects to take the oaths and the ſacrament within a certain time, he is to forfeit 500l. to the informer. In that caſe it is not a cauſe of a doubtful nature, that a jury may decide upon one way or another; it is a certain ſpecific ſum, enacted and declared by parliament to be the right of him who lays and proſecutes the information. A bill for this purpoſe now lies upon your table; but any gentleman would, I believe, be laughed at, who was to uſe ſuch an argument againſt the bill, as to ſay, that by ſtopping the information he ſhould rob the informer of 500l. The only difference I perceive in the two caſes is, that poverty and diſtreſs might induce a man to inform in one caſe; but no ſuch motives can be applied to the caſe in queſtion.

Honourable

Honourable CHARLES FOX.

I take great ſhame to myſelf, that I have not riſen ſooner to declare my ſentiments on this important queſtion; for I think it diſgraceful in any man to ſit ſilent on ſuch an occaſion, who ever had the uſe or faculty of ſpeaking in this Houſe: but, Sir, my ſilence was owing to my aſtoniſhment; I was confounded, I was amazed! for though I ſaw this bill at firſt in the ſame light in which I behold it now; yet, when I looked round me, and ſaw who the honourable gentlemen are who introduced it; that they are men of character, men of abilities, men of knowledge, men of reputed integrity; I heſitated, I ſtrove to perſuade myſelf, that I muſt rather be miſtaken myſelf, than that any thing ſo bad, ſo violent, ſo lawleſs, ſo monſtrous, could be advanced by ſuch men who propoſed this bill. But I could not long remain undecided; I ſoon beheld the propoſition in all its naked, genuine deformity: then, Sir, as I was at firſt ſtruck dumb with aſtoniſhment, I was ſeized with horror and indignation. Who, Sir, that has a conſcience to revere juſtice, a ſenſe of liberty, or a regard for the conſtitution, can liſten, without feeling an honeſt zeal to defeat a propoſition, which, at one blow, deſtroys our

conſtitution, our liberty, and our laws? Gentlemen are loud in their clamours againſt miniſterial influence. I avow the ſyſtematic ſupport of that miniſter in all his meaſures, who has my good opinion and confidence; but that miniſter ſhall never have my aſſiſtance and ſupport, who ſhall dare to propoſe what theſe gentlemen, who are ſo proud of their oppoſition to miniſters, now propoſe. Mr. Speaker, it is under the law that every man holds his property, and enjoys his liberty in ſecurity and eaſe. But I firmly believe, as far as I am informed, that no man can have a better title to his eſtate, than the very title which the Crown has veſted in Sir James Lowther to the eſtate in queſtion. If *that* title is to be taken away by act of parliament, why not bring an act to take away any other part of his eſtate? Why not of another man's? For, if bills are thus to paſs for transferring the property of one man to another, there can be nothing ſacred, nothing ſecure amongſt us. I wiſh, therefore, Sir, the gentlemen who brought in this bill, would, for their honour's ſake, withdraw it. I am ſure my conſcience would never ſuffer me to be at reſt, was I to perpetrate the injuſtice intended by this bill. As to myſelf, the ſame conſcience, which dictates my preſent oppoſition, ſhall carry me on to oppoſe the bill in every ſtep, through every ſtage.

But

But if it ſucceeds here, it cannot ſucceed elſewhere. I do therefore again deprecate the honour and juſtice of this Houſe, that we may not ſuffer the ſcandal of paſſing this bill to lie at our doors, and give the honour of rejecting it to the other Houſe of parliament.

Sir George Savile.

I am extremely obliged to the candour of thoſe gentlemen, who have beſtowed on me ſo much more praiſe than I deſerve, in the part I had the honour to take, in bringing in a bill for the general quiet of the ſubject, which the Houſe thought proper to paſs three years ago: but I own that I do not feel myſelf much elated by it. However grateful for their praiſes, to ſay truth, I am the more humiliated at having received them, being ſo ſoon to loſe them; for I obſerve, that the ſame gentlemen, who have flattered me ſo much with their commendations for what I *have* done, think no name too bad for thoſe who may give the ſame vote, that I ſhall probably give on the queſtion before us.

Perhaps, Sir, if nobody but myſelf was in queſtion, I might reſt contented under the cenſure in one ſcale, ſo balanced by applauſe in the other. But there is another perſon (Sir Anthony Abdy) to whom much

the greater part of the praiſe, beſtowed on *me*, is due; and who, if he was preſent, would not, I believe, be aſhamed to ſhare any diſgrace that may fall on *me:* He is, unfortunately for himſelf and the Houſe, confined at home. I am doubly unhappy in his abſence, as he would do much more juſtice to his own ſentiments than I can by relating them. But we have talked the matter over; our memories correſpond to the fact pretty nearly, and our inferences do not differ much.

Firſt of all I deſire to diſclaim, for myſelf and my colleague, every imputation that we ever thought the Duke of Portland ought to be debarred for ever from applying again for that juſtice, which we think was violated in the clauſe by which he was proſcribed.

Let me, however, ſuppoſe, that a converſation of this ſort might have happened during the courſe of the bill. Suppoſe ſomebody ſhould ſay to the Duke of Portland, "Here is a bill for the general quiet "and protection of the ſubject; but, unluckily for the bill, your Grace is to be "protected by it; which is thought ſo unjuſt "and ſo unreaſonable, that the bill may probably be loſt, unleſs your Grace will conſent to wave your right to that common "protection which every man is to derive "from it." Well then, the perſon thus queſtioned is the Duke of Portland, and the

Duke

Duke of Portland muſt neceſſarily anſwer for himſelf: the Duke of Portland, therefore, could only ſay, " God forbid that my pri-
" vate intereſt ſhould ſtand in competition
" with that of the public: let my cauſe be
" ſeparated; let the public be anſwered in
" the firſt inſtance; perhaps in ſome future
" day the ear of juſtice may be opened to
" my cauſe; perhaps Parliament may not
" perſiſt in proſcribing me and my family
" for ever."

I believe, Sir, I ſhall explain my meaning by a fable better than by argument. Suppoſe then a boat, with all her crew, ſhould be caſt away upon ſome barren rock, which yielded not a grain of ſubſiſtence, and their proviſions were conſumed to the laſt morſel; they muſt put out again to ſea, or elſe ſtarve upon the rock; they put out to ſea, but they find their boat had ſuffered much in the ſtorm, was become leaky, and in danger of being overſet, by having too many men on board: the pilot is, however, of opinion, that if they had *juſt one man leſs* the boat might poſſibly be ſaved: one would naturally ſuppoſe a diſpute muſt ariſe, who that *one* man ſhould be; but there happened to be one man on board ready to offer himſelf a ſacrifice for all; they put him on ſhore, and leave him expoſed upon the rock. Now, Sir, ſhould the crew once find themſelves out of danger, ought they to abandon the *man*

who *ſaved* them, or ought they to put back to ſave *him*, to whom they owed their own preſervation?

Sir WILLIAM MEREDITH.

THE peculiar ſituation in which I ſtand in this queſtion, will, I truſt, entitle me to the indulgence of the Houſe, if I once more preſume to trouble you. Partiality to an individual, in ſubverſion of law and juſtice; invaſion of private rights, ſecured by the faith of parliament; together with every other name and epithet that can be given to violence and injuſtice, have been aſcribed to thoſe who introduced, and who ſupport this bill. It becomes me therefore to ſtate, as I will do fully and fairly, the grounds on which I have acted; and alſo examine the truth and juſtneſs of thoſe gentlemen, who have taken a contrary part; whoſe conſciences would *ſeem* to have been ſo exceedingly agitated, and who have been ſo liberal of their invectives during the courſe of the whole debate. And though I cordially adopt every ſentiment that fell from an honourable friend of mine *, who ſpoke ſecond in the debate, yet he will forgive me, if I lament that he took ſo much notice of thoſe indecent and abuſive publications, ſome of which have been handed about privately, and others circulated

* Hon. Conſtantine Phipps.

circulated by the news-papers. As to myſelf, I have ſo long and ſo often borne the efforts of ineffectual calumny, that I am quite indifferent about them. I hope it will not be an unbecoming vanity in me to ſay,

" That I am arm'd ſo ſtrong in honeſty,
" That they paſs by me as the idle wind,
" Which I regard not."

But ſtill, Sir, I cannot be inſenſible to the reproach of ſuch perſons as are near and dear to me; and I own it affected me deeply, to hear from an honourable gentleman *, whoſe friendſhip and good opinion are above all things valuable to me, that this proceeding was commenced in rage and tyranny, and that nothing could crown it with ſucceſs, but perſeverance in a ſpirit of deſpotiſm, which, he hoped, would either be changed or overcome, before the bill can paſs into a law. As to the *rage* which my friend attributes, had any other perſon charged me with it, I ſhould have appealed to him as a witneſs of the *ſame temper* in private, which this Houſe has ſeen in my public demeanor through this buſineſs. I ſhall ſpeak to the tyranny by-and-by. My honourable friend thinks, that, as Sir James Lowther was authorized to proſecute the ſuit he has commenced under an act of parliament, he has done no

* Mr. Frederick Vane.

no more than obey that authority; and therefore he applies a paſſage in an author, whom we all admire and ſo often quote:

" It would be *tyranny* to ſtrike and gall him
" For what we *bid* him do."

Mr. Speaker, the *Nullum Tempus* bill, that we paſſed three years ago, took from the Crown the power of diſquieting hereafter poſſeſſions of ſixty years, but reſerved a power of *proſecuting ſuits to effect within the* year. Of this power Sir James Lowther has alone availed himſelf; but, in my ſenſe of things, that honourable perſon would have ſhewn his obedience to parliament, by deſiſting from his purſuit, much better than by taking a momentary advantage to diſturb a poſſeſſion of ſixty years, which parliament has condemned, and annihilated the power to attempt in any future time. But had my honourable friend ſtated the whole ſentence he quoted, I believe we ſhould not differ in our application of it. It runs thus:

" 'Twould be my tyranny to ſtrike and gall 'em
" For what I bid them do. For we bid this,
" When *evil deeds* have their permiſſive paſs,
" And not their puniſhment."

What then is the *evil deed* that has been done? Is it not the tyrannous and odious grant, by which the county of Cumberland has been ſo diſquieted? I admit, I aver, that

Parliament,

Parliament, inſtead of allowing its permiſſive paſs, ought to have puniſhed the Miniſter that made the grant. But where the tyranny lies of ſtopping its further progreſs, I am at a loſs to conceive. Will my honourable friend permit me now to refer him to the fable and the moral of that excellent play (Meaſure for Meaſure) from whence he took his quotation? The ſtory is of an old, abſurd, obſolete law being revived, and an amiable young nobleman condemned to die by it. The great poet never tried his genius more, than in uniting all the vile and deteſtable qualities that human nature is capable of, in order to draw the character of a miniſter capable of reviving and executing ſuch a law. Let my honourable friend next turn his recollection to that part where poetic juſtice cloſes the laſt ſcene. There he will ſee what the deciſion of virtue, reaſon, and mercy was, on the execution of that antiquated law. Did the wiſe and gracious prince of that drama ſuffer it to take its courſe, and deſtroy an innocent man? No, he ſaved and protected him; but aſſigned over the execrable miniſter, who revived and would have enforced the law, to puniſhment, remorſe, and ſhame. Now let my honourable friend apply his fable to the hiſtory of this day. The law of the land has ordained, that an uninterrupted poſſeſſion of ſixty years ſhall be a bar to

every poſſible claim of ſubject againſt ſubject. But there was an old obſolete law, a wretched remnant of tyranny, that ſaid *Nullum tempus occurrit regi.* This law was attempted to be revived in the reign of James the Firſt, but the attempt was ſtopt at the out-ſet by act of parliament. For one hundred and ſixty years it has lain dormant, till a few years ago, when, together with every principle, policy, and maxim of that reign, this law was revived alſo. Here do I reſt the merits of this queſtion. I contend for that rule of law which, after ſixty years uninterrupted poſſeſſion, eſtates the owner in an unqueſtionable right. My honourable friend contends for that *rule of government*, which gives to length of poſſeſſion no ſecurity againſt the claims of the Crown. Which then is the ſide of deſpotiſm; which that of law, liberty, and juſtice, let God, and every rational being, judge betwixt us.

A noble Lord *, who ſpoke lately, has condeſcended to make me a compliment of having introduced this bill with politeneſs, candour, and perſonal attentions: He has been pleaſed to return my compliment by charging me with injuſtice, violence, and breach of parliamentary faith. He aſks, why is the ſame parliament, that kept its faith with Sir Richard Brook laſt year, to *break*

* Lord North.

break its faith with Sir James Lowther *this* year?

Mr. Speaker, in the caſe of Sir Richard Brook, I preſumed to take a more active part than perhaps became me. Sir Richard Brook conſented that the Duke of Bridgewater ſhould carry his canal through his eſtate, on condition of keeping at a certain diſtance from his houſe and gardens. The Duke of Bridgewater preſented a petition to enable him to come nearer his houſe than the agreement allowed, and to cut through his garden. I denied the right of parliament to break that agreement, without Sir Richard Brook's conſent: I oppoſed the motion for ſubjecting this point to be litigated in a committee, and decided by the evidence of Mr. Brindley. I then ſtood, as I now ſtand, in defence of ancient property againſt the attack of power.

The noble Lord having attributed injuſtice to me, I am happy that he has given us his own idea of juſtice.

He has told us, that Sir James Lowther, in his magnanimity of mind, has exempted from proſecution all thoſe that are objects of pity; and therefore we ought ſtill to ſuffer the Duke of Portland to be perſecuted, becauſe he is not to be pitied. Is *this* then the noble Lord's idea, and *this* his language of juſtice, that *he*, who is no object of pity, is no object of juſtice? Let me aſk the noble Lord, if there is more than one defi-

nition of juſtice? and if *equality* is not that definition? May I again aſk the noble Lord, what it is to ſingle out one man, and to cut him off from the common benefit and protection of the law? Is it not proſcription? And is proſcription juſtice? Or is it not injuſtice in the extreme? Is not the principle of proſcription *that*, which can never be generated, but in the darkeſt, deepeſt, fouleſt abyſs of tyranny?

The noble Lord alſo ſays, it is a *breach of parliamentary faith*, to break through the law that we paſſed ſo lately. The people will indeed ſay to us:

"Be theſe juggling friends no more believed,
"Who palter with us in a double ſenſe,
"Who keep the word of promiſe to our ear,
"And break it to our hope."

Well, indeed, might the people of Cumberland apply theſe lines to us, when we paſſed an act, with a title that promiſed *quiet*, and whoſe proviſions expoſed them to deſtruction. But does the noble Lord remember, who gave the example of altering the bill? It was the late Attorney General this very ſeſſion; who ſat on the noble Lord's right hand, and, under his countenance and aſſiſtance, brought in a bill for enlarging the term, to enable the Crown to proſecute the occupants of a number of houſes in the Savoy. If the noble Lord thought the faith of parliament pledged to

maintain

maintain the act inviolable, why did he aſſent to break through it, in order to proſecute the inhabitants of the Savoy beyond the time as limited by the act? Surely the noble Lord muſt flatter himſelf with ſuppoſing, that the ſyſtem of deſpotiſm (which I wiſh to believe his Lordſhip is *not* intruſted to execute) is already in a ſtate of maturity and perfection, and that we have made a compleat ſurrender of ourſelves, if he can expect us to acknowledge, that it *is* a breach of parliamentary faith to narrow the powers of the Crown in favour of the ſubject, and *no* breach of faith to *enlarge* thoſe powers *againſt* the ſubject.

The learned Serjeant * who ſits behind me, ſpoke with great candour, and was followed by that attention which his perſonal abilities and profeſſional character deſerve:—But he reſts his argument chiefly on the danger that private property may incur, by ſtopping a ſuit now in its progreſs through the Courts, for which, he ſays, there is no precedent. I ſhall ſpeak to the precedent by-and-by; but the learned gentleman, I think, is miſtaken, in ſtating the intereſt of his profeſſion, as the intereſt of the public. I grant the profeſſion will be a loſer, by ſtopping a law-ſuit, which, at its very commencement, has coſt one of the parties 4000l. But the public is neither intereſted in the commencement, progreſs,

* Serjeant Leigh.

nor iſſue of a law-ſuit, as it reſpects individuals. The intereſt which the public has in the adminiſtration of juſtice, conſiſts in the general ſecurity and protection that we derive from it; and it is that very principle of law, on which property reſts in ſafety, that forbids an uninterrupted poſſeſſion of ſixty years to be litigated at common law. The queſtion therefore before us does not touch the competency of the Courts to try any cauſe, which they have a common right to try; it is merely, whether we ſhall continue a competency in this one caſe, that the law itſelf has taken away in every other.—And I am proud to be able to aſſert to that learned gentleman, that the very motive for introducing this bill, was, to ſave the people of Cumberland from the neceſſity of maintaining the inheritances they were born to, at a ruinous expence, perhaps, as fatal to themſelves and their families, as the entire loſs or ſurrender of their fortunes.

As to the precedents, of which, it is ſaid, there are none, our hiſtory is a compendium of them. Every act, by which our anceſtors vindicated the rights of the people againſt the power of the crown, is a precedent in point. The end and aim of every ſtruggle for liberty has been, to reduce the regal within the limits of a *legal* power. Freedom of *perſon* and freedom of property went hand in hand together.

ther. I think, indeed, Sir, the general cauſe of liberty more intereſted in the one than the other; becauſe, if a man ſhould loſe his perſonal liberty, and be confined, even to a dungeon, though he would become an object of commiſeration, yet he would be rendered incapable of extending his miſeries to others: but if it is ever ſaid to a man, who is dependent for his property, *do as you are commanded, or your eſtate ſhall be taken away*; ſhould then neceſſity compel him to yield, he might be not only enſlaved himſelf, but become an active and effectual inſtrument in impoſing ſlavery upon others. Magna Charta, all the foreſt laws from the reign of Henry the Third to the 16th of Charles the Firſt, together with the act for aboliſhing the tyranny of feudal tenures at the reſtoration of Charles the Second, are every one of them precedents for rendering private property independent, and ſecuring it againſt the attacks of the Crown. It is therefore unaccountable in gentlemen, eſpecially of the learned profeſſion, to object the want of precedent.

The ſtatute of James the Firſt, which we are endeavouring to extend to the caſe of the Duke of Portland, is a precedent, that, in principle, as well as fact, goes to every point of the queſtion before us. It not only gives future quiet to the ſubject, but ſtops every law-ſuit then depending. The expreſs

expreſs proviſions are, to ſecure every eſtate of ſixty years poſſeſſion, *againſt all and every perſon, having, or pretending to have, any eſtate, right or title, by force, or colour of any letters patents, or grants, upon ſuggeſtion of concealment, or defective titles, of or for which ſaid manors, lands, and tenements, no verdict, judgment, or decree, hath been had or given.*

Let it now be remembered, who it was that introduced this bill, and carried it through the Houſe. Sir Edward Coke was the man. Did Sir Edward Coke then think it a violation of law, to ſecure a poſſeſſion of ſixty years againſt the claim of the Crown? Did *he* call the antient property of an ancient houſe, the property of an informer? Did he contend for the lucre of lawyers, againſt the principles of law? No, Sir, the ſtatute of King James is the brief of Sir Edward Coke's thoughts on this ſubject; but he did more; he has left a comment on that act, in further teſtimony of his opinion, and as a guide to poſterity. If the learned Serjeant has not read, or has forgotten that inſtitute, which the great maſter of his own ſcience wrote, let him peruſe it—I will then make *him* the judge between us, who acts up to the principles of Sir Edward Coke, and who deviates from them.

It is now ſo long ſince I moved the repeal of this clauſe, that the Houſe will perhaps

perhaps endure me, if I repeat my motives for it. I muſt take the liberty to contradict an honourable gentleman *, who aſſerted, the Duke of Portland's intereſt was the ſole ground on which we have acted. The Duke of Portland was not named, nor thought of particularly, when we heard that ſtriking, ſorrowful hiſtory of the diſtreſſes, in which ſo many freeholders of Cumberland were involved. Some of them, we were told, have even given up their eſtates, rather than ſtand a law-ſuit with ſo great a competitor; and the reſt are in that ſtate of ſuſpence, which is the aggravation of miſery. On *their* account I introduced the bill. The honourable gentleman has indeed aſſured us, that he † will withdraw all the proſecutions, except one: may he derive all the honour that ſuch a conceſſion merits, and may the peace he has given to others be repaid ten-fold into his own boſom! But ſtill, Sir, I am at a loſs to know, Why is the Duke of Portland to be excluded? What crime has he committed, ſo as to forfeit the protection of the law?

The anſwer is, *volenti non fit injuria.* His own conſent binds *him*, and our aſſent binds *us*, to the clauſe. That the Duke of Portland conſented to ſeparate his cauſe from the public, I admit; but he did not ſever himſelf from the juſtice of parliament

* Mr. Dyſon. † Sir James Lowther.

hereafter, as has been ſtated by my honourable friend *.

But allowing the Duke *did* give his conſent, it ſhall not carry me to do injuſtice to thoſe, whom his conſent ought not to affect. For the eſtate in queſtion is under ſettlement to his Dutcheſs in jointure, and entailed upon his ſon. The Dutcheſs, indeed, is fortunately in a way to be taken care of. For an honourable gentleman †, as authorized by Sir James Lowther, has propoſed to make up her jointure out of Sir James Lowther's eſtate. To be ſure, Sir, the kindneſs and generoſity of taking away a man's eſtate, in order to make a jointure upon his wife, is very tranſcendent; but decency forbids me to imagine, that ſuch a wife, of ſuch an huſband, can take a jointure from *one* who is *not* her huſband.

But let me for one moment ſuppoſe the Duke of Portland as much bound by this conſent, as man *can* be by any bargain whatſoever; What then was the agreement? It was as univerſally admitted, that the Duke of Portland ſhould remain expoſed, and others be protected.—An agreement, if broken by one party, is diſcharged as to the other. If therefore proſecutions *have* been commenced; if they, for whoſe quiet the Duke of Portland engaged to ſacrifice himſelf, *have* been diſquieted, then

* Sir George Savile. † Governor Johnſton.

is the condition void. Proſecutions have *been* commenced—he who commenced them has made the agreement void.

I did move the *repeal* of this clauſe, becauſe I thought it ſhould never have been in the bill. I thought the bill fit to protect *all* or *none*. The clauſe, if applied to the claims of the Crown, violates the principle of the quieting act itſelf; if applied to the caſe of ſubject and ſubject (as it does in fact, for the right of the Crown is veſted in Sir James Lowther) it violates that ſacred rule of law, which ſecures the ſubject, in a poſſeſſion of ſixty years, againſt every other ſubject. That we are bound by our former act, is an argument not to be admitted; we are as free to *repeal* as to *enact*. In all other courts there is an appeal againſt every erroneous judgment. In parliament, the appeals lie to parliament only—if therefore we have done wrong, and upon deliberation and reviſion we ſhould perſiſt in it, we ſhall ſhew ourſelves in the very worſt light in which human nature can appear. It is our lot to *err*, but to perſevere in error is our crime.

My learned friend *, who ſits near me, in the laſt day's debate on this ſubject, quoted a compariſon of the two ſorts of government, as defined by an elegant writer of antiquity, the *Imperium hominum*, and the *Imperium legum*.—*Regem hominem eſſe, à quo*

* Mr. Wedderburn, Solicitor General.

impetres ubi jus, ubi injuria opus ſit. Legem, rem ſurdam, inexorabilem. I am as willing to reſt my cauſe on the true application of this paſſage, as on the quotation from Meaſure for Meaſure, in the beginning of the debate; for I cannot define the two ſorts of government better than by calling one *the law of the land*, and the other *a diſpenſing power in the Crown*. The former, then, is *deaf and inexorable* to any claim ſet up againſt a poſſeſſion of ſixty years. But *nullum tempus occurrit regi*. The King, in his own perſon, is exempt from every thing that is not the perfection of wiſdom and goodneſs. But the Miniſter, who executes the powers of the Crown, has no rule to exert *this* power over property, but that of his own will, which may incline him to ſet up one man and pull down another, as each may be adverſe or ſubſervient to his purpoſes. My learned friend thinks all ground of complaint taken away, becauſe thoſe perſons, who would have been real ſufferers, are now exempted: according to that idea, where there is no cruelty, there is no tyranny. But I am ſure, my learned friend's ideas are not ſo narrowed; he knows, that not the man alone who *feels*, but he who is *expoſed to* tyranny, is without freedom. Tyranny is like the thunderbolt, which ſtrikes the oak rather than the willow; to reſiſt it, we muſt protect *him* who is the object of the tyrant's ſtroke; the poor man is beneath it; where there-

fore the cauſe of humanity *ends*, there the cauſe of liberty *begins*.

It is high time, Sir, that I ſhould ceaſe to trouble you. After being ſo accuſed of injuſtice and violence, I thought my defence neceſſary, though I am afraid it has treſpaſſed too much upon your patience. Let me then only ſtate how it ſtands betwixt *me* and my accuſers. I have brought in a bill to reſcue two hundred perſons from oppreſſion. In one hundred and ninety-nine inſtances they not only applaud, but are glad to ſhare my merit. For extending the law to one man more, I am charged with rage, tyranny, deſpotiſm, and every appellation that denotes injuſtice. Let, however, thoſe who affect to think me ſo unprincipled, conſider how deeply they participate of my guilt; for, in reſpect of one hundred and ninety-nine perſons out of two hundred, they ſtand in the ſame predicament as myſelf. But why are they *ſtopt* at that *one?* Is it from a genuine wiſh to proſcribe the Duke of Portland? I acquit them of ſuch a motive. But, alas! his Grace is no favourite at Court. The mandate is gone forth; and the Miniſter has proclaimed that, "*if thou let this man* "*eſcape, thou art not Cæſar's friend.*"

The Houſe divided upon the queſtion, Whether the Speaker ſhould leave the chair? 155 were for it, and 164 againſt it.

Mr. Dyſon then moved to put off the Bill for three months.

The two following Letters contain a further illuſtration of this important matter.

To Lord NORTH.

My Lord,

The attention of the public having lately been recalled to the *Nullum Tempus* Bill, it was very natural to enquire into the part that your Lordſhip took in the progreſs of it; and it was not wonderful to find that the ſame Miniſter, who two years ago diſgraced his conſtitutional principles by the moſt inveterate oppoſition to it, ſhould now endeavour to rob the people of England of the full effects of that noble, and, I truſt, immortal Bill.

But, my Lord, you muſt forgive an old man, when he tells you, that the low and paltry degradations of yourſelf, to which you have been obliged to ſtoop in order to carry this favourite point, are unworthy of your private character, and ſeriouſly criminal in the Miniſter. Perſonally unknown to both the contending parties, I have no neceſſity, nor have I much inclination, to pay them compliments: parallels are invidious. One cannot however forget that the two parties are the Duke of Portland and

Sir

Sir James Lowther; both of them young men, both of large poſſeſſions, both decided in their public conduct, equally true to their principles, their connexions, and their friendſhips. Of their domeſtic characters I perſonally know nothing; but I confeſs that I have heard enough of their private lives, and have ſeen enough of their public conduct, to wiſh, as I ſhould certainly act on the great ſtage of life with the noble Duke, ſo rather that I might paſs my private hours in his ſociety than with Sir James. Your Lordſhip is of a different opinion, and you feel a pride in the patronage of Sir James, that I ſhall not be inclined to diſpute with you. But whatever might have been your zeal to ſerve his cauſe, ſurely you might have done it more honourably than by following the preſſing advice of that illuſtrious inheritor of the deepeſt Tory blood in this country, Sir William Bagot, who emphatically conjured you to exert, in favour of Sir James, *all your miniſterial influence, due or undue, fair or unfair, right or wrong*; who invoked to your aſſiſtance *every good and malignant ſpirit, every power in heaven or hell:*

Flectere ſi nequeo Superos, Acheronta movebo.

I ſay, you might have done better, not to have liſtened to ſo violent and unconſtitutional advice, becauſe every indifferent perſon muſt have ſeen, as I have done, the ſhameful and untrue publications in the News-papers, ſo critically inſerted during the

the three days preceding the laſt ſtruggle in the Houſe of Commons upon this Bill, when twice before the common and ordinary efforts of Adminiſtration had failed, as the Miniſter's laſt effort to carry into effectual execution the ſpirit of that exhortation, *duly or unduly, fairly or unfairly, right or wrong*. Upon future occaſions you will do yourſelf honour, and your cauſe, whatever it may be, no harm, by imitating the conduct of your opponents upon this, who had the decency, the decorum, and the dignity to wait the event in ſilence, with a patient conſciouſneſs of their own rectitude, and the juſtice of their cauſe, without applying to the low, illiberal, and ſcandalous method of prejudicing the minds of men by invidious, partial, and falſe publications of a queſtion then depending in an Houſe of Parliament. I do not chuſe to ſay much upon other more private and pointed meaſures of your Lordſhip to defeat this Bill, becauſe I fear that too many are involved in the ſame guilt by their baſe ſubmiſſion to miniſterial mandates; and I had rather draw a veil over them, than be obliged to expoſe to the world the nakedneſs of characters, which otherwiſe perhaps may eſcape without cenſure. Applauſe they cannot gain till their principles deſerve it. But I muſt not paſs over in total ſilence the unprecedented applications of a Firſt Miniſter, in his own proper perſon, to ſolicit ſupport upon this queſtion,

queſtion, nor the diſgraceful humiliation of imploring aſſiſtance under his own hand, as well as the impeachable mandates under the threat of more than miniſterial vengeance, if that aſſiſtance were withheld. It may become a Secretary of the Treaſury, who is at the ſame time the Attorney and the Steward of Sir James Lowther, to uſe theſe arts; but coming under the hand, and from the mouth of the Miniſter himſelf, they are hateful and dangerous to the conſtitution, inſulting to his adherents, and ignominious to himſelf.

But the cauſe was not a common one, the parties were not indifferent: No, my Lord; they were not, it is true; for the cauſe was the very cauſe, which tho' your Lordſhip was a chief inſtrument in originating, every honeſt Engliſhman to this hour abhors. It was to ſupport that abominable grant of the Duke of Portland's eſtate, for the purpoſe of influencing an election, and of inflicting an exemplary puniſhment upon that firm Nobleman for his ſteady oppoſition to Tory miniſters; but above all, the party was Sir James Lowther. Under ſuch provocation, and in the ſervice of ſuch a patron, (for I muſt rather call him your patron than adherent, when it is well known that your miniſtry depended upon the ſucceſs of this meaſure) I would allow you the *due* and the *fair* influence of your office. Sir William Bagot will forgive me if I can

make

make no greater ſacrifice. But, my Lord, all that you have done might have been forgiven, had not this black tranſaction invaded the moſt ſacred rights of friendſhip and of honour.—Yes, my Lord, to lend your aſſiſtance, to encourage and reward the treachery of one young man towards another, ſtrikes deeply at the root of every thing which a good man holds in the deareſt eſtimation. Can you take that adder to your boſom? can you truſt him with your confidence, when you have ſeen him, in the courſe of the ſame cauſe, thinking it nothing to act a double part, but nobly triumphing over every feeling that binds the heart to honour and humanity?

It was not glorious enough for Mr. Charles Fox barely to contradict himſelf; it was reſerved for him, at the opening of his life, to prove how eaſy and irreproachable it is under your Lordſhip's adminiſtration to betray his firſt, his neareſt, and his deareſt friend; to ſacrifice the intereſts and the honour of a young Nobleman, the companion and the confident of his private hours, at the diſhonourable ſhrine of miniſterial influence. But he too heard the leſſons of Sir William Bagot; and I will do Mr. Charles Fox the juſtice to allow, that he is a ready ſcholar.

My Lord, I mention this, not ſo much from regret at the baneful conſequence it muſt carry to the public character of the

Earl of Carliſle, who, at his firſt outſet in the world, has thought it beſt to eſpouſe and encourage a meaſure, in order to deſert it afterwards with a more ſignal *eclat*, as from the pain it gives me to ſee all ſenſe of private and public faith and honour ſit ſo lightly on young men of birth and education, I mention it too, my Lord, to you as being *particeps criminis*. A miniſter, or a man of honour, would have diſdained to involve himſelf in ſo perfidious a compromiſe. A miniſter, or a man of feeling or of virtue, would never wiſh to nurſe the tender ſenſibility of infant minds to deeds of ignominy and reproach.

Thus might I have taken the liberty of addreſſing to your Lordſhip, as being the capital actor in this bad ſcene; and I hope you will not deny to thoſe, who wiſh well to a vanquiſhed party, the poor comfort of ſtating to the public thoſe miſerable methods by which you became the victor.

If your cauſe was good, and your weapons fair, the judgment of the world will go along with you. But if a queſtion, which ought peculiarly to have continued a private queſtion, is by any influence (*due or undue*) made more miniſterial than any political conteſt, and has been carried only by the weight of the Miniſtry, and not the aſſenting conſciences of individuals, the conduct of your Lordſhip as Miniſter, exerting that influence, muſt be amenable to public

 reviſion.

reviſion. The queſtion being now no longer under the deliberation of parliament, my next letter ſhall examine the merits of the Bill itſelf, and refute ſome of the numberleſs falſehoods ſo induſtriouſly propagated, ſhameful in themſelves, but more ſcandalous from the time, the manner, and the motive of their publication.

ULYSSES.

To Lord NORTH.

MY LORD,

IN my laſt letter addreſſed to your Lordſhip, I took the liberty of obſerving upon the ſtrong methods you had uſed to defeat the late *Nullum Tempus* Bill. The ſubject of this ſhall be, to ſtate what the merits of that Bill were, upon the ſucceſs of which your exiſtence as a Miniſter was made to depend.

The odious grant of the Duke of Portland's eſtate, in the county of Cumberland, having raiſed a general alarm in the minds of men, Sir George Savile, ever awake to the conſtitutional calls of his country, moved in the next ſeſſion, for leave to bring in that famous bill, emphatically called *the Bill of Quiet*; by which the property of the ſubject was to be ſecured againſt all claims of the Crown, after ſixty years uninterrupted poſſeſſion.

It was natural that your Lordſhip, who could affix the Exchequer ſeal to that ſhameful grant, who could, without compunction,

tion, exult in the iniquitous advantage you thereby gave to Sir James Lowther in the approaching election, and who could, for ſuch a purpoſe, rob a man in cold blood of the poſſeſſions of his anceſtors, ſhould exert the ſame unconſtitutional powers to ſupport a prerogative, of which your Lordſhip, and the Miniſter of that day, had expoſed the abſurdity and the tyranny, by the grant in queſtion.

The Bill was loſt. But the perſeverance of a good man in a good cauſe is not eaſily ſhaken. Sir George Savile revived the Bill in the ſucceeding ſeſſion; and its ſucceſs at laſt, notwithſtanding all the efforts of your Lordſhip, and the reſt of the Adminiſtration, gave a ſignal proof of the conſtitutional ſpirit which will break forth, when the ſtruggle begins between liberty and prerogative.—In the progreſs of the Bill, a clauſe was propoſed by the friends of Sir James Lowther, which left to the grantees of the Crown twelve months from the 1ſt of January, 1769, for the proſecution of their ſuits. The friends of the Bill, anxious to ſecure to the ſubject, if they could, ſo important a law, did not heſitate in admitting the clauſe. They aſſented to the propoſition, that the caſe of Sir James Lowther ſhould remain untouched *by the bill then depending*.

Such was that conſent, of which Sir James's friends have talked ſo much: and

what does it at laſt amount to? We agree not to touch the caſe of Sir James Lowther by *this bill*. Does this import an agreement (if by the way ſuch an agreement could be made by private parties, in reſtrant of the powers of parliament) *never* to interpoſe? at *no* time, in *no* circumſtances, under *no* provocations of the moſt flagrant abuſe, or the moſt urgent neceſſity? Does it mean to ſay, that *all future* parliaments ſhall to eternity be barred from interfering, though impelled to it by the cleareſt juſtice? Do the friends of the Duke of Portland, does the whole Legiſlature mean to ratify, to confirm, and to ſanctify that hateful grant? If theſe intentions neither can, nor will be attributed to the conſent given, the utmoſt conſtruction of it can extend no farther, than I have contended that its true ſenſe imports, *a neutrality at that time, and in that bill, towards the queſtion*. If the caſe ſhould be found to require *future* interpoſition, *future* parliaments will interpoſe. But till the conduct of Sir James Lowther ſhall make it neceſſary for us to point at *him perſonally*, we will give him credit for thoſe feelings of ſenſe, of decency, and of remorſe, that ſhall make it peeviſh to revive the memory of that odious tranſaction.

Have theſe ſenſations operated upon Sir James? What has been his conduct? On the laſt day of the year allowed him, he

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ſerved above four hundred ejectments. The county of Cumberland, from one extremity of it to the other, was in the utmoſt confuſion. Not a man who had voted againſt him within the deſcribed limits of the grant, was to eſcape. The word was gone forth—The rebels muſt be ſacrificed, the county muſt be cruſhed. But the alarm that was given by ſo extenſive and unparalleled revenge, made it very ſoon prudent and neceſſary for Sir James to abandon many of thoſe ſuits: and they ſtood then reduced to the *moderate number of fifteen bills in a court of equity, and two hundred and twenty-five ſuits at law.*

Your Lordſhip, perhaps, could ſee with pleaſure the miſeries of that devoted county. You could, perhaps, contemplate with inward ſatisfaction the glorious and exalted figure of Sir James Lowther, while you beheld him, with an air of triumphant dignity, *ride in the whirlwind and direct the ſtorm.* Other ideas filled the mind of Sir William Meredith. He could not hear of the diſtreſs and confuſion into which that unfortunate county was plunged by the clauſe alluded to, without immediately reſolving to do that juſtice to Cumberland, which had been already ſhewn to every other county in the King's dominions. He therefore brought in the bill to repeal that clauſe.

I do not mean to enter into abſtruſe arguments upon the ſubject. In truth, it

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is a ſubject that the plain common ſenſe of every moderate capacity, the natural and firſt feelings of every generous and honeſt heart, muſt inſtantly decide upon. A law is made for the *general quiet of the ſubject*. A clauſe improvidently admitted (upon a principle of delicacy which ſubſequent events have not juſtified) counteracts the intention of that law, by perverting its beneficial purpoſes, and making it operate as a *partial* inſtrument of oppreſſion, inſtead of ſecuring to the *whole* kingdom the bleſſings it was intended to diffuſe. Is not this a ſtate of the fact? Was not the whole kingdom, Cumberland excepted, in the full enjoyment of that ſecurity which the Bill of Quiet was intended to procure? and was not Cumberland, and Cumberland alone, ſacrificed by this clauſe? For, extraordinary as the fact is, it is a truth which ought to be known, and which I am ſure nobody will dare to controvert, that Sir James Lowther is the ſingle grantee of the Crown who has availed himſelf of this clauſe. There was not a man to be found, Sir James Lowther excepted, who would ſuffer himſelf to be tranſmitted to poſterity as the laſt Engliſhman who exerciſed over his fellow-ſubjects this expiring right of barbarity.

Aſhamed of proceedings which all men ſaw with concern, the Bill operated ſo far upon Sir James, that he was at laſt induced to offer to abandom every other ſuit he had

begun,

begun, provided only that he might be at full liberty to proſecute with effect the *great delinquent, the Duke of Portland.*

Your Lordſhip's notions of equal juſtice reconciled you to the idea. You thought that his Grace's ſituation in life, and his fortune, exempted him from compaſſion; and that he was therefore excluded from all claim or pretenſion to common juſtice.

It is your duty, my Lord, to inform the public why that grant is acknowledged to be untenable againſt all but his Grace of Portland? why it is to be abandoned and renounced in every inſtance but in his? what there is in it, if Sir James thought it ſhameful and unjuſtifiable to proceed againſt the two hundred and twenty-four, that ſhould make it honourable or juſt to purſue the two hundred and twenty-fifth? Sir James Lowther and your Lordſhip have allowed, that all traces of this deteſted grant ſhould be obliterated with reſpect to every ſuit commenced, one only excepted. Have you tried thoſe ſuits? Have you heard their reſpective merits? Can you diſtinguiſh between them, and ſay this man ſhould be quieted; that man ought to be harraſſed and oppreſſed? Yet you have ſaid ſo;—for the Duke of Portland is an exception to all caſes. He is not fit to have the benefit of that law (created by the ſeverity of his particular caſe) which every other Engliſhman does actually enjoy. He *ought* to ſtand branded and expoſed to all poſterity: he

ſhall

ſhall be attainted by name: he muſt fall the ſingle victim, and be made the only ſacrifice for the peace and quiet of this country.

Let us then hear no more of the objection of parliamentary interpoſition, *pendente lite*, by an *ex poſt facto* law. Your Lordſhip heard in the proper place, and could not refute, the many precedents of laws made *ex poſt facto* upon urgent occaſions. Your Lordſhip could not then, nor will now deny, that when Parliaments have interfered to protect the ſubject againſt oppreſſive grants, they have always done it, they muſt ever do it, *pendente lite*. Till the grant is put in ſuit, no grievance can be ſaid to exiſt. The proſecutions under it are the very grievance which Parliament interpoſes to redreſs. Such was the view, and ſuch was the effect of the bill for the general quiet of the ſubject in King James's time, and which Sir George Savile's was intended to purſue.—But, my Lord, you cannot avail yourſelf of the argument. The conceſſion of Sir James Lowther has alone defeated it.

A grant is paſſed, affecting in its conſequences the rights of two hundred and twenty-five perſons. By a law that ſhould be made *ex poſt facto, pendente lite*, you would deem it honourable and juſt to reſtrain Sir James Lowther from proceeding in two hundred and twenty-four of theſe ſuits. It remains for your Lordſhip to ſatisfy the world that it is honourable and juſt that he ſhould pro-

ceed in the two hundred and twenty-fifth. You muſt do more.—You muſt prove that it will not be both *diſhonourable and unjuſt* if he do, or if he be ſuffered to proceed in it.

When I am uſing the words honour and juſtice, I could wiſh, before I cloſe my letter, to aſk Sir James Lowther, under which of thoſe ideas he advanced a fact from the beſt authority, the *bill itſelf*, (and which has ſince been repeated by anonymous writers) that the Duke of Portland gave the firſt provocation, and drew upon himſelf the conſequence, by filing a bill in Chancery againſt Sir James for the recovery of a very valuable fiſhery that had been immemorially in his family.—The world perhaps may not know that the aſſertion was contradicted upon the ſpot, and not afterwards defended. But the world ſhall know what the fact truly was.

The noble Duke is poſſeſſed of a ſalmon fiſhery upon the river Eden, cloſe to the gates of Carliſle. Sir James Lowther enjoys a very valuable one below his Grace's, nearer the ſea. Sir James thought proper, contrary to immemorial practice, to adopt a new and comprehenſive mode of fiſhing by ſpreading his nets quite acroſs the river; ſo that it became abſolutely impoſſible for any ſalmon to get up to his Grace's fiſhery. The Duke therefore filed a bill againſt Sir James Lowther to perpetuate the teſtimony of old witneſſes, in order that Sir James

might be obliged to uſe his fiſhery as his anceſtors had always done, and to exerciſe his rights in a manner that ſhould not be totally deſtructive of his Grace's property.

My Lord, I now leave you in company with the man who could miſtake, for any purpoſe, ſo clear a fact. I ſhall trouble your Lordſhip with no obſervations upon ſuch conduct, becauſe I can make none without appealing to that tribunal of Honour and Conſcience, that has not been hitherto very favourable to the Duke of Portland when the Miniſter has preſided in it, and Sir James Lowther has been the ſuitor.

ULYSSES.

FINIS.